

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 4:07CR00133-01 JLH

ANDRE JEFFERSON

DEFENDANT

**ORDER**

The United States Court of Appeals for the Eighth Circuit has reversed and remanded for this Court to vacate the conviction and sentence of Andre Jefferson for possessing cocaine base with intent to distribute in violation of 21 U.S.C. § 841(a)(1).

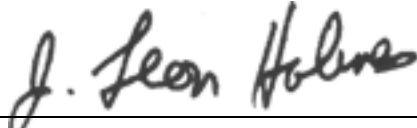
Jefferson was convicted of: (Count 1) possessing with intent to distribute more than 5 grams but less than 50 grams of a mixture and substance containing cocaine base in violation of 21 U.S.C. § 841(a)(1); (Count 3) knowingly possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i); (Count 4) possessing a firearm after having been convicted of a felony in violation of 18 U.S.C. § 922(g)(1); and (Count 5) possessing with intent to distribute more than 5 grams but less than 50 grams of a mixture and substance containing cocaine base within 1,000 feet of a public elementary school in violation of 21 U.S.C. § 841(a)(1) and § 860. Jefferson was sentenced to 150 months imprisonment on each drug trafficking count to run concurrently; 120 months imprisonment on the felon in possession count to run concurrently with the two drug trafficking sentences; and 60 months imprisonment on the count of possessing a firearm in connection with a drug trafficking offense to run consecutive to the other counts.

The conviction for possessing cocaine in violation of 21 U.S.C. § 841(a)(1) must be vacated because it is a lesser included offense of the conviction of possessing cocaine within 1,000 feet of

a public elementary school. Therefore, the conviction and sentence under Count 1 are hereby vacated.

The conviction on Count 1 did not affect the guideline calculation nor the Court's ultimate determination of a sentence based on all of the factors to be considered pursuant to 18 U.S.C. § 3553(a). Therefore, no new sentencing hearing is needed.

IT IS SO ORDERED this 2nd day of March, 2010.

  
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J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE